IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 2686 OF 2007

Nanabhau Dyandev Kawathekar. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Sachin Manale for the applicant.

K.V.Saste, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 14th September 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

2. The applicant is seeking bail in connection with C.R.No.90/2007 registered with Dehu Road Police Station, district- Pune for the offences punishable under sections 376 and 506 of Indian Penal Code.

3. The applicant is in custody. He does not dispute the fact of committing an act of rape with the prosecutrix on 13th March, 2007 and 31st March, 2007. However, he contends that the said henious acts were with the consent of the prosecutrix. The submission made is pregnant with the tacit admission on the part

of the applicant. Now, the only question is: whether the act of rape was with consent or otherwise. The applicant is relying on the affidavit filed by the prosecutrix stating therein that out of misunderstanding a complaint came to be filed. However, nowhere in the affidavit she states that she had consented for the act of incident. In that view of the matter, affidavit of prosecutrix is of no value. Thus, it is not a fit case for grant of bail.

4. In the result, application is rejected. The submissions recorded herein are on the basis of oral arguments made. The same as also the observations made be treated as prima facie. All rival contentions on merits are kept open. The trial Court is directed to try and decide the matter on its own merits without getting influenced by this order or observations recorded herein.

JUDGE